IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMERICAN PRESIDENT LINES, LTD. American President Lines, Ltd. 16220 N Scottsdale Road, Suite 300 Scottsdale, AZ 85254, and APL CO. PTE. LTD. American President Lines, Ltd. 16220 N Scottsdale Road, Suite 300 Scottsdale, AZ 85254, and APL LIMITED American President Lines, Ltd. 16220 N Scottsdale Road, Suite 300 Scottsdale, AZ 85254, Petitioners, v. XPO INTERMODAL, INC. XPO Intermodal, Inc. (f.k.a. Pacer International, Inc.) 6805 Perimeter Drive Dublin, OH 43016 Respondent.	:	Case No.

PETITION TO COMPEL ARBITRATION

REQUEST FOR EARLY DECISION

Petitioners American President Lines, Ltd., APL Co. Pte. Ltd., and APL Limited (collectively, "APL"), by their attorneys, as and for their petition under the Federal Arbitration

Act ("FAA"), 9 U.S.C. § 4, to compel Respondent XPO Intermodal Inc. ("XPO") to submit certain disputes to arbitration, aver upon information and belief as follows:

INTRODUCTION

1. APL brings this petition seeking a declaration that certain disputes which have arisen between APL and XPO (as successor to Pacer International Inc. ("Pacer")) under the Amended and Restated Stacktrain Services Agreement dated October 1, 2013 by and between them (the "Agreement") must be resolved through the Agreement's arbitration process, and compelling XPO to participate in that process in accordance with such Agreement.[1]

THE PARTIES

2. Petitioners American President Lines, Ltd. and APL Limited are Delaware corporations, headquartered in Scottsdale, Arizona. Petitioner APL Co. Pte. Ltd. is a Singapore corporation, headquartered in Singapore. APL is in the business of providing container shipping and global transportation services.

3. Respondent XPO is a Tennessee corporation, headquartered in Dublin, Ohio. XPO is the successor to Pacer, which was acquired by the parent company of XPO, XPO Logistics, Inc., in March 2014. XPO is in the business of, among other things, providing intermodal transportation services to customers including APL.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this matter due to the diversity of citizenship of the Parties, under 28 U.S.C. § 1332(a)(1). It is a dispute between citizens of

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[1] A copy of the Agreement is annexed as Exhibit A to APL's Request for Binding Mediation ("Request for Arbitration"), dated April 28, 2017, which request is annexed here to as Exhibit A. Capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Agreement. APL and XPO are collectively referred to as the "Parties." The [redacted] is legally equivalent to arbitration within the meaning of the FAA.

different States (or in the case of the APL Co. Pte. Ltd., between a citizen of a foreign state and a citizen of a State) and the amount in controversy is more than $75,000.

5. This Court has personal jurisdiction over XPO because it is a corporation with its principal place of business in the State of Ohio.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other reasons, XPO may be found in this judicial district.

FACTUAL ALLEGATIONS

7. The purpose of the Agreement is to allow APL to avoid or mitigate repositioning costs it would otherwise incur to transport empty containers from their destinations back to ports for loading onto APL's ships by making those empty containers available to XPO, so that XPO could in turn sell space in them to its customers.

8. [redacted]

9. [redacted]

10. [redacted]

[redacted]

11. [redacted]

12. [redacted]

[redacted]

13. [redacted]

[redacted]

14. [redacted]

[redacted] Despite APL's repeated efforts to negotiate in good faith, more than 90 days passed and the issues remained unresolved. Therefore, on April 28, 2017, APL initiated binding mediation and arbitration [redacted] Request for Arbitration (Ex. A).

15. [redacted] APL's Request for Arbitration therefore demanded that within seven days, XPO contact APL to establish a prompt mutual exchange of party nominations of their respective mediators, a date for such mediators to appoint the chair of the mediation panel and the timetable for the mediation. Request for Arbitration (Ex. A) ¶ 20. APL also advised XPO in APL's April 28, 2017 letter accompanying the Request for Arbitration, attached hereto as Exhibit B, that if XPO refused to do this, XPO would be in material breach of the Agreement, and APL would move to compel XPO to comply with [redacted] under the relevant provisions of the Federal Arbitration Act. Ex. B (Letter from APL to XPO dated April 28, 2017).

16. Seven days later, on May 4, 2017, XPO sent APL the letter attached hereto as Exhibit C, refusing to participate in the contractually required dispute resolution process on the alleged grounds that [redacted] As set forth in APL's response of May 9, 2017, attached hereto as Exhibit D, and in this Petition, XPO's position that it is not required to engage in binding mediation (i.e. arbitration) is baseless under the plain meaning of the Agreement, and the Court should compel XPO to mediate and arbitrate these issues in accordance with the Agreement. Ex. D. The Parties' disagreement over [redacted] is one of the merits issues to be decided [redacted]: it is plainly a dispute [redacted]

which must be resolved via [redacted] negotiation/mediation/arbitration process. [redacted]

17. [redacted]. The FAA requires that this agreement to arbitration be enforced according to its terms.

18. The Agreement also provides that XPO [redacted]

19. Pursuant to Local Rule 7.1(b)(3), APL respectfully requests that the Court rule on this petition as promptly as reasonably possible, based on FAA, 9 U.S.C. § 4, which provides that a petition to compel arbitration can be made on five days' notice, and [redacted]

WHEREFORE, APL respectfully requests that this Court to issue an order (a) compelling XPO to arbitrate the claims in APL's Request for Arbitration in accordance with Section 6 of the Agreement; (b) setting a date for the mutual exchange of party nominations of their respective mediators/arbitrators,[2] and a date for such mediators/arbitrators to appoint the chair of the panel (subject in the latter case to modification by the Party chosen mediators/arbitrators once selected); and (c) directing XPO to indemnify APL for all costs (including attorneys' fees) incurred by APL in connection with this proceeding.

[2] This procedure for simultaneous mutual exchange of nominations was followed by the Parties during the one previous instance when, under a predecessor agreement with a similar dispute resolution mechanism, they engaged in the Agreement's binding mediation process.

Respectfully submitted,

/s/ *Quintin F. Lindsmith*

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